

2003 Illinois Family Law Report Article:

**THE COURT CANNOT RESTRICT
A SPOUSE'S VISITATION BY EXCLUDING A COMPANION
ABSENT A FINDING OF SERIOUS ENDANGERMENT**

Many practitioners have encountered a situation where, at a temporary or a final hearing, a spouse, generally the Husband, is granted reasonable visitation with the proviso that his girlfriend should not be present during some or all of the visitation periods. Such a restriction on the Husband's visitation rights cannot be imposed because of the judge's attitudes toward morality, or because it might be in the best interests of the child. The restriction is allowable only in a situation where the serious endangerment standard contained in Section 607 has been alleged and proved.

Visitation rights for the non-custodial parent can be found in Section 607 of the Act. Section 607(a) states the general rule in the following terms:

“(a) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral or emotional health.”

Section 607(c) provides the guidelines for modification of visitation orders and states that:

“[t]he court shall not restrict a parent's visitation rights unless it finds that visitation would endanger seriously the child's physical, mental, moral or emotional health.”

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The level of evidence required to establish the endangerment standard is quite high and has been described as follows:

“The endangerment standard is an extraordinary finding [citations omitted] that is onerous, stringent, and rigorous. [citations omitted]. It is more stringent than the best interests standard, which is used to determine custody [citations omitted].

The burden is on the parent seeking the restriction to prove by a preponderance of the evidence that the current visitation seriously endangers the child’s welfare. [citations omitted].”

Pleasant v. Pleasant, 628 N.E.2d 633, 640, 256 Ill.App.3d 742, 751 (1st Dist. 1993).

To condition the Husband’s visitation upon the absence of his girlfriend during periods of visitation is a restriction within the scope of Section 607. Therefore, there must be a finding of serious endangerment in order to validate the restriction. In Re The Marriage Of Diehl, 582 N.E.2d 281, 294, 221 Ill.App.3d 410, 429 (2nd Dist. 1991); In Re The Marriage Of Hansen, 445 N.E.2d 912, 915-916, 112 Ill.App.3d 564, 568 (5th Dist. 1983).

Thus, the exclusion of the Husband’s girlfriend during visitation at the zoo, or at the playground, or even at the Husband’s residence overnight, must be based on a finding of serious endangerment in order to stand.

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